IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC Plaintiff, v. CEMEX PUERTO RICO; CANOPY ECOTERRA CORP, Defendants.	Civil No. 07-01658-JAF Breach of contract; collection of moneys; damages. Jury trial demanded.

ANSWER TO VERIFIED COMPLAINT BY DEFENDANT CEMEX DE PUERTO RICO, INC.

TO THE HONORABLE COURT:

COMES NOW Cemex Puerto Rico, Inc. ("CEMEX"), through its undersigned counsels, respectfully alleges in answer to plaintiff's allegations:

JURISDICTION AND VENUE

1. Paragraph 1 is denied for lack of information.
2. Paragraph 2 is denied for lack of information.
3. Paragraph 3 is admitted to the extent that CEMEX de Puerto Rico, Inc. is a corporation organized under the laws of the Commonwealth of Puerto Rico.
4. Paragraph 4 is admitted.
5. Paragraph 5 is admitted.
6. Paragraph 6 is admitted.

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THE PARTIES

7. Paragraph 7 is denied due to lack of information and belief.

8. Paragraph 8 is admitted, with the exception that under no factual or legal basis is Mr. Barsotelli or Canopy Ecoterra an agent of CEMEX or should be called as such.

9. Paragraph 9 is admitted, with the exception that under no factual or legal basis is Mr. Barsotelli or Canopy Ecoterra an agent of CEMEX or should be called as such.

10. Paragraph 10 is admitted to the extent that CEMEX de Puerto Rico, Inc. is a corporation organized under the laws of the Commonwealth of Puerto Rico.

11. Paragraph 11 is denied.

GENERAL ALLEGATIONS

12. Paragraph 12 is not an allegation, therefore it is denied.

13. Paragraph 13 is denied. CEMEX is not privy to the relationship between AWMR and Canopy Ecoterra.

14. Paragraph 14 is denied. AWMR did not participate in, nor was a party to, the contractual relationship between CEMEX and Canopy Ecoterra. The allegations in paragraph 14 lack any basis in fact.

15. Paragraph 15 is denied for the lack of direct information.

16. Paragraph 16 is denied for the lack of direct information.

17. Paragraph 17 is denied for the lack of direct information.

18. Paragraph 18 is denied for the lack of direct information.

19. Paragraph 19 is denied for the lack of direct information.

20. Paragraph 20 is denied for the lack of direct information.

21. Paragraph 21 is denied for the lack of direct information.

22. Paragraph 22 is denied for the lack of direct information.

23. Paragraph 23 is denied for the lack of direct information.

24. Paragraph 24 is admitted to the extent that AWMR had the obligation to comply with CEMEX’s security policies and to coordinate its dismantling work with CEMEX in order to not interrupt operations at the CEMEX Ponce cement plant.

25. Paragraph 25 is denied. CEMEX learned of the terms of the agreement between AWMR and Canopy Ecoterra only after the controversy between them arose.

26. Paragraph 26 is admitted solely to the extent it outlines basic procedures to follow in the dismantling and removal of scrap material. Cemex denies any reference to agency and the remaining allegations contained in the paragraph.

27. Paragraph 27 is denied as redacted. CEMEX provided a security briefing and I.D.'s to AWMR personnel, and authorized their entrance to the Ponce cement plant. The remaining allegations contained in the paragraph are denied.

28. Paragraph 28 is denied for lack of personal knowledge. CEMEX did receive in its cement premises equipment, trailers and other machinery for AWMR's dismantling and removal services.

29. Paragraph 29 is denied. It is affirmatively alleged that AWMR engineers and personnel strayed from the work plan authorized by CEMEX, as they would perform dismantling works in unauthorized areas.

30. Paragraph 30 is denied. CEMEX was aware that Canopy Ecoterra had subcontracted the dismantling and removal of scrap material. CEMEX coordinated the works with Canopy

Ecoterra's subcontractor, AWMR. The work to be performed was in the general areas of kilns 1-4 and mills 2-5, 7 and 10, pursuant to CEMEX's work plan.

31. Paragraph 31 is denied. Canopy Ecoterra is not an agent of CEMEX. CEMEX did not know terms of the agreement between AWMR and Canopy Ecoterra because it is not privy to their agreement. AWMR was Canopy Ecoterra's subcontractor and had no contractual relationship with CEMEX, nor did AWMR have to disclose any information regarding its subcontract with Canopy Ecoterra.

32. Paragraph 32 is denied as redacted.

33. Paragraph 33 is denied. It is affirmatively alleged that CEMEX had a contractual relationship solely with Canopy Ecoterra.

34. Paragraph 34 is denied as drafted. Canopy Ecoterra is not CEMEX's agent. CEMEX was aware that Canopy Ecoterra had subcontracted the dismantling and removal of scrap material. CEMEX was the sole party interested in coordinating the works with Canopy Ecoterra's subcontractor, AWMR, due to its presence within its cement plant.

35. Paragraph 35 is denied as drafted. As subcontractor for the work-execution, AWMR agreed to follow a work plan

developed by CEMEX in order to prevent any disruption to CEMEX cement plant operations. AWMR strayed from the execution of the work plan by dismantling and removing materials and equipment not authorized for the particular stage of the work plan. AWMR’s actions caused damages to CEMEX property and, on occasions, interrupted the cement plant operations.

36. Paragraph 36 is denied as drafted. CEMEX only admits it expected AWMR to follow the work-plan. CEMEX affirmatively alleges that the work areas chosen by AWMR were not “optimal” because their location within active plant operations interrupted CEMEX operations, resulting in the interruption of operations and damages to CEMEX property.

37. Paragraph 37 is denied.

38. Paragraph 38 is denied. CEMEX agreed to consider an amendment to its contract with Canopy Ecoterra only if Canopy Ecoterra could actually show that it suffered economic losses due to the conditions at the Ponce cement plant. CEMEX did not negotiate with AWMR. Furthermore, CEMEX learned of the terms of the agreement between AWMR and Canopy Ecoterra only after the controversy between AWMR and Canopy Ecoterra arose.

39. Paragraph 39 is denied. Allegations under paragraph 38 of the current Answer are herby incorporated by reference.

40. Paragraph 40 is denied. CEMEX only admits that dismantling and removal works at the CEMEX Ponce cement plant continued until June 22, 2007.

41. Paragraph 41 is denied. CEMEX affirmatively alleges that the dismantling of facilities built decades ago included dealing with the conditions described by AWMR. These conditions, however, received prompt attention from CEMEX.

42. Paragraph 42 is denied as drafted. CEMEX solely admits that the asbestos found was promptly removed by Canopy Ecoterra by the end of June, 2007. CEMEX affirmatively alleges that asbestos was only found as an isolation material for the power lines that ran close to kilns 1-5.

43. Paragraph 43 is denied. CEMEX affirmatively alleges AWMR made a proposal for asbestos removal to Canopy Ecoterra.

44. Paragraph 44 is denied. CEMEX affirmatively alleges that the asbestos was confined to a small area of the plant. During the performance of asbestos removal works, which lasted around six to 8 weeks, AWMR continued (or could

continue) works in other parts of the cement plant included in the scope of work.

45. Paragraph 45 is denied.

46. Paragraph 46 is denied. CEMEX never offered dismantling “other” CEMEX facilities. CEMEX affirmatively alleges AWMR strayed from the execution of the work plan by dismantling and removing materials and equipment not authorized for the particular stage of the work plan. AWMR’s actions caused damages to CEMEX property and interrupted the cement plant operations.

47. Paragraph 47 is denied as drafted. Before the controversy between AWMR and Canopy Ecoterra arose, there was no controversy as to ‘finishing’ the project. AWMR strayed from the appropriate and orderly execution of the work plan, causing damages to CEMEX. CEMEX was not in agreement with the selective dismantling and removal of metals because the purpose of the contract with Canopy Ecoterra was the complete dismantling and removal of certain facilities.

48. Paragraph 48 is admitted only to the extent that Ramiro Lozano received the April 26, 2007 letter. The characterization of facts stated therein is denied.

49. Paragraph 49 is denied. CEMEX affirmatively alleges that it contracted with Canopy Ecoterra the dismantling and removal of materials in no particular order and that there were entire areas of the cement plant ready for dismantling, which AWMR refused to work in.

50. Paragraph 50 is admitted only to the extent that AWMR sent the report to CEMEX. The characterization of facts stated therein is denied.

51. Paragraph 51 is denied as drafted. CEMEX affirmatively alleges Abul Shah attended a meeting with Mr. Ramiro Lozano, Mr. Ignacio Barsotelli, and Mr. Juan Tomás Emmanuelli to discuss the performance of the contract, and AWMR’s allegations contained in its April 26, 2007 letter.

52. Paragraph 52 is admitted to the extent that AWMR stated its complaints. CEMEX affirmatively restates its allegations under paragraph 49 of the current Answer. Furthermore, all “live” wires and tubes in use were duly identified by CEMEX personnel before AWMR began work in the designated area, so AWMR could work around them.

53. Paragraph 53 is denied insofar they refer to Mr. Barsotelli as “agent”. The remaining allegations are

denied because they refer to statements in which CEMEX did not participate.

54. Paragraph 54 is denied insofar they refer to Mr. Barsotelli as “agent”. The remaining allegations are denied because they refer to statements in which CEMEX did not participate. Furthermore has reason to believe AWMR did make a proposal for asbestos removal to Canopy Ecoterra.

55. Paragraph 55 is denied as drafted. CEMEX admits that as part of his duties, Mr. Ramiro Lozano requested quotations for asbestos removal services from various providers.

56. Paragraph 56 is admitted in so far as asbestos removal service providers came to the plant to inspect and make proposals.

57. Paragraph 57 is denied for lack of direct information; it refers to events in which CEMEX did not participate Mr. Barsotelli is not an “agent” of CEMEX.

58. Paragraph 58 is denied for lack of direct information; it refers to events in which CEMEX did not participate. Mr. Barsotelli is not an “agent” of CEMEX.

59. Paragraph 59 is denied for lack of direct information; it refers to events in which CEMEX did not participate.

60. Paragraph 60 is denied for lack of direct information; it refers to events in which CEMEX did not participate. Mr. Barsotelli is not an “agent” of CEMEX.

61. Paragraph 61 is denied.

62. Paragraph 62 is denied for lack of direct information; it refers to events in which CEMEX did not participate.

63. Paragraph 63 is denied as drafted. CEMEX solely admits it approved the removal of asbestos, the remaining allegations are denied. Canopy and Mr. Barsotelli are not “agents” of CEMEX.

64. Paragraph 64 is denied because it refers to events in which CEMEX did not participate. Mr. Barsotelli is not an “agent” of CEMEX.

65. Paragraph 65 is denied because it refers to events in which CEMEX did not participate.

66. Paragraph 66 is denied because it refers to events in which CEMEX did not participate.

67. Paragraph 67 is denied because it refers to events in which CEMEX did not participate.

68. Paragraph 68 is denied because it refers to communications and obligations between Canopy Ecoterra and its subcontractor, AWMR.

69. Paragraph 69 is denied because it refers to communications and obligations between Canopy Ecoterra and its subcontractor, AWMR.

70. Paragraph 70 is denied.

71. Paragraph 71 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

72. Paragraph 72 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

73. Paragraph 73 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

74. Paragraph 74 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

75. Paragraph 75 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

76. Paragraph 76 is denied because it refers to events in which CEMEX did not participate, or to issues in which CEMEX has no basis to allege.

77. Paragraph 77 is denied; CEMEX personnel have no knowledge of ‘locks being cut’. CEMEX affirmatively alleges that AWMR acquiesced to the removal of a container by Ignacio Barsotelli because an AWMR engineer aided Mr. Barsotelli in the removal of the container.

78. Paragraph 78 is denied.

79. Paragraph 79 is denied. CEMEX’s “General Services Coordinator” was designated to authorize the removal of containers from CEMEX’s Ponce cement plant premises. He did not authorize the way-bill because it did not have a destination.

80. Paragraph 80 is denied.

81. Paragraph 81 does not require an allegation from CEMEX, for which reason it is denied.

82. Paragraph 82 does not require an allegation from CEMEX, for which reason it is denied.

83. Paragraph 83 is denied as drafted. Mr. Ramiro Lozano and Mr. Juan Emmanuelli intervened in an attempt to aid the parties in amicably resolving the controversy.

84. Paragraph 84 is denied as drafted. CEMEX only intervened in an attempt to aid the parties in amicably resolving the controversy. CEMEX did not reach any agreement with AWMR; it only attempted to mediate the controversy

between AWMR and Canopy Ecoterra in order to secure timely completion of the project.

85. Paragraph 85 is denied.

86. Paragraph 86 is denied because it refers to events between Canopy Ecoterra and AWMR. Mr. Barsotelli is not an “agent” of CEMEX.

87. CEMEX admits paragraphs 87 to the extent that AWMR referred a matter to the police authorities; the remaining allegations are denied for lack of information.

88. CEMEX admits paragraphs 88 to the extent that AWMR referred a matter to the police authorities; the remaining allegations are denied for lack of information.

89. Paragraph 89 is denied insofar it assumes that CEMEX was in a position to adjudicate the controversy between Canopy Ecoterra and its subcontractor, AWMR.

90. Paragraph 90 is denied.

91. Paragraph 91 is denied. Mr. Barsotelli is not an “agent” of CEMEX.

92. Paragraph 92 does not require a responsive pleading from Cemex and therefore is denied.

93. Paragraph 93 does not require a responsive pleading from Cemex and therefore is denied.

94. Paragraph 94 does not require a responsive pleading from Cemex and therefore is denied.

95. Paragraph 95 does not require a responsive pleading from CEMEX and therefore is denied.

96. Paragraph 96 does not require a responsive pleading from CEMEX and therefore is denied. Neither Mr. Barsotelli nor Canopy Ecoterra is an "agent" of CEMEX.

97. Paragraph 97 does not require a responsive pleading from CEMEX and therefore is denied.

98. Paragraph 98 does not require a responsive pleading from CEMEX and therefore is denied.

99. Paragraph 99 is denied. CEMEX solely admits it sought a smooth transition in the work being performed in its cement facilities.

100. Paragraph 100 is admitted only to the extent that it alleges CEMEX sought a smooth transition in the work being performed in its cement facility; the remainder of the allegations is denied.

101. Paragraph 101 is admitted solely to the extent that a loading dock was built during the month of 2007, the remaining allegations are denied.

102. Paragraph 102 is admitted only to the effect that AWMR continued some removal of metals, the remaining allegations are denied.

103. Paragraph 103 is denied as drafted; CEMEX solely admits that certain containers were registered pursuant to CEMEX standard procedures.

104. Paragraph 104 is denied as drafted; it does not provide a time frame accurate enough to allow a responsive allegation. Mr. Barsotelli is not is an “agent” of CEMEX.

105. Paragraph 105 is denied as drafted; it does not provide a time frame accurate enough to allow a responsive allegation.

106. Paragraph 106 is denied as drafted; it does not provide a time frame accurate enough to allow a responsive allegation.

107. Paragraph 107 is denied.

108. Paragraph 108 is admitted only to the extent that on June 22, 2007 a CEMEX issued the letter. The remaining allegations are denied.

109. Paragraph 109 is denied.

110. Paragraph 110 is denied.

111. Paragraph 111 is denied.

112. Paragraph 112 is denied.

113. Paragraph 113 is denied.

114. Paragraph 114 is denied. CEMEX affirmatively alleges that it tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

115. Paragraph 115 is denied. CEMEX affirmatively alleges that it tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

116. Paragraph 116 is denied. CEMEX affirmatively alleges that it tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

117. Paragraph 117 is denied. CEMEX affirmatively alleges that it tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

118. Paragraph 114 is denied. CEMEX affirmatively alleges that it tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

119. Paragraph 119 is admitted. The characterization of the instruction as “sudden” is denied.

120. Paragraph 120 is admitted. CEMEX affirmatively alleges that it allowed AWMR personnel time to secure all equipment, trailers, and containers in the site.

121. Paragraph 121 is denied.

122. Paragraph 122 is denied.

123. Paragraph 123 is denied.

124. Paragraph 124 is denied. CEMEX affirmatively alleges that it allowed AWMR personnel time to secure all equipment, trailers, and containers in the site.

125. Paragraph 125 is denied.

126. Paragraph 126 is denied.

127. Paragraph 127 is denied.

128. Paragraph 128 is denied.

129. Paragraphs 129-130 do not require responsive pleading from CEMEX and are therefore denied.

130. Paragraph 131 is denied.

131. Paragraph 132 is denied.

132. Paragraph 133 is denied.

133. Paragraph 134 is denied.

134. Paragraph 135 is denied.

135. Paragraph 136 is denied.

136. Paragraph 137 is denied.

137. Paragraph 138 is denied.

138. Paragraph 139 is denied.

139. Paragraph 140 is denied.

140. Paragraph 141 is denied.

FIRST CAUSE OF ACTION

141. Paragraphs 142-152 are denied. AWMR had a contractual relationship with Canopy Ecoterra exclusively. Neither Mr. Barsotelli nor Canopy Ecoterra is an "agent" of CEMEX. Any claim of contractual rights and obligations between CEMEX and AWMR is frivolous. It is frivolous to allege and designate Canopy Ecoterra as an agent of CEMEX.

SECOND CAUSE OF ACTION

142. Paragraphs 153-163 are denied.

THIRD CAUSE OF ACTION

143. Paragraph 164 is not an allegation, therefore it is denied.

144. Paragraphs 165-169 are denied. Furthermore, they do not require a responsive pleading from CEMEX.

FOURTH CAUSE OF ACTION

145. Paragraph 170 is not an allegation, therefore it is denied.

146. Paragraph 171 is denied. Furthermore, it does not require a responsive pleading from CEMEX.

FIFTH CAUSE OF ACTION

147. Paragraph 172 is not an allegation, therefore it is denied.

148. Paragraphs 173-174 are denied. Furthermore, they do not require a responsive pleading from CEMEX.

SIXTH CAUSE OF ACTION

149. Paragraph 175 is not an allegation, therefore it is denied.

150. Paragraphs 176-182 are denied.

RELIEF SOUGHT

151. Paragraph 183 is not an allegation, therefore it is denied.

152. Paragraphs 184-190 are denied.

AFFIRMATIVE DEFENSES FOR
DEFENDANT CEMEX DE PUERTO RICO, INC.'S

1. Unclean hands.
2. Estoppel.
3. Plaintiff's claims against CEMEX are frivolous; they assume a contractual relationship with CEMEX knowing it has never existed.

4. AWMR was subcontracted by Canopy Ecoterra to remove all metals and materials from the site. In selecting the most valuable materials to remove, AWMR was setting the stage to default in its obligations.

5. AWMR, allegedly an expert in dismantling metals and removal of scrap metal materials, knew or should have known of the possibility of the presence of materials such as asbestos, of the presence of live electric wires, and of water lines, especially since the work to be executed would take place inside an active cement plant.

6. AWMR strayed from the execution of the work plan by dismantling and removing materials and equipment not authorized for the particular stage of the work plan. AWMR's actions caused damages to CEMEX property and, on occasions, interrupted the cement plant operations.

7. AWMR acted in bad faith by creating a hostile work environment within CEMEX's Ponce cement plant, by involving CEMEX in controversies between Canopy Ecoterra and AWMR, by spreading false rumors involving CEMEX and CEMEX employees, and by including CEMEX in this frivolous complaint.

CEMEX DE PUERTO RICO'S COUNTER AND CROSS CLAIMS

I. GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL OF CEMEX'S CAUSES OF ACTION:

1. During the summer of 2006, CEMEX de Puerto Rico negotiated certain agreements and acquiesced to various obligations regarding its operations in the Municipality of Ponce, Puerto Rico.

2. The Municipality of Ponce, various neighborhood associations, and CEMEX reached certain compromises regarding the investment of capital and the incorporation of new technologies to modernize CEMEX's Ponce Cement Plant and promote increased environmental standards.

3. However, to implement the modern processes and operations, CEMEX needed to dismantle obsolete parts, equipment or machinery of its plant, including mills, kilns, and secondary equipment, like precipitators and chimneys. These are located within the plant's active and operating structures and equipments because they form part of the originally built cement plant.

4. With a particular time frame agreed upon with the Municipality of Ponce, CEMEX requisitioned the dismantling and removal project. CEMEX's only interest in the project was the disassembly and removal of the plant's machinery and structures not in use.

5. CEMEX was able to obtain quotations from different companies. However, most project proposals received by CEMEX

required some sort of disbursement or deposit by CEMEX in order to execute the project.

6. Because the scrap material to be removed is worth more than the actual performance of the project, CEMEX representatives required a contract at no cost or at a benefit for CEMEX, without any initial disbursement or deposit.

7. Eventually Mr. Ignacio Barsotelli and his company, Canopy Ecoterra, accepted a contract without an initial deposit or disbursement by CEMEX. CEMEX and Canopy Ecoterra agreed that Canopy Ecoterra would pay CEMEX $23.00 per ton of scrap material dismantled and removed from the Ponce cement plant.

8. Around August 2006, the "Contract for the Dismantling and Sale of Scrap Material" (*"Contrato de Desmontaje y Venta de Chatarra"*) (hereinafter, "Contract") was formally executed between CEMEX and Canopy Ecoterra.

9. Although the Contract has no date, the Contract was executed before the scope of work was drafted by CEMEX's project manager, José Manuel Fraticelli, approved by the General Cement Plant Manager on September 15, 2006.

10. On or around that date, Canopy Ecoterra and CEMEX incorporated the scope of work to the Contract.

11. Through information and belief, Canopy Ecoterra subcontracted its rights under the Contract to at least two different subcontractors that performed works before Canopy Ecoterra subcontracted its rights under the Contract to AWMR.

12. CEMEX also worked with Canopy Ecoterra's *other* subcontractors in the coordination of works to prevent interruptions in plant operations.

13. CEMEX did not participate in any contracts executed between Canopy Ecoterra and its subcontractors. CEMEX was not privy to the subcontract.

14. Canopy Ecoterra subcontracted American Waste Management & Recycling ("AWMR") to perform the Contract in March 29, 2007.

15. CEMEX did not participate in the contract executed between American Waste and Canopy Ecoterra. CEMEX was not privy to the subcontract.

16. Canopy Ecoterra and AWMR visited and inspected the plant before subscribing the contract. Through information and belief, CEMEX affirmatively alleges that AWMR accepted the subcontract in an "as is" condition.

17. CEMEX and AWMR only worked jointly in the coordination of works to prevent interruptions in plant operations.

18. CEMEX's only interest was the timely performance by Canopy Ecoterra of the project of dismantling and removing the items listed in the September 15, 2006 Scope of Work.

19. CEMEX representatives did not receive or review the agreement between Canopy Ecoterra and AWMR.

20. CEMEX had no interest in whether Canopy Ecoterra subcontracted or not the services required in the project.

21. CEMEX's only interest was that at the cost of Canopy Ecoterra and in the period of one year, the works at the Ponce plant would be finished; the intact and adequately functioning facilities would have had no obsolete and unwanted material, equipment or structures.

22. Not until after the subcontract had been executed and the controversies regarding its specific performance arose between our contractor, Canopy Ecoterra, and its subcontractor, did CEMEX even review the subcontract.

23. In order to organize the execution the dismantling works in a way to least interrupt CEMEX's operations, Jose Manuel Fraticelli developed a work plan with Canopy Ecoterra's subcontractors, AWMR.

24. As subcontractor for the work-execution, AWMR agreed to follow a work plan orally agreed upon in order to prevent any disruption to CEMEX cement plant operations.

25. AWMR, however, strayed from the execution of the work plan by dismantling and removing materials and equipment not authorized for the particular stage of the work plan.

26. AWMR worked in unauthorized areas within the active plant operations in order to harvest specific material, considered to be more valuable. These acts interrupted CEMEX operations and caused damages to CEMEX property.

27. From early on in the performance of its subcontract, AWMR unreasonably claimed it was unable to properly perform the contract.

28. On April 26, 2007, AWMR sent a letter to Mr. Ramiro Lozano listing certain conditions in the Ponce facilities that allegedly impeded or delayed the removal of metals.

29. As a result, CEMEX held a meeting to discuss the issues between CEMEX and Canopy's subcontractor's poor performance of the contract.

30. Canopy and its subcontractor alleged that CEMEX's structure, location and operations were such, that the dismantling cost was too high. As a result, CEMEX, in good faith agreed to *consider* an amendment to its contract with Canopy Ecoterra, only if Canopy Ecoterra could affirmatively show that it suffered economic losses due to the conditions at the Ponce cement plant.

31. CEMEX never reached an agreement to amend the Contract with Canopy Ecoterra.

32. Furthermore, CEMEX never directly negotiated with AWMR any amendment to CEMEX's Contract. Nor did CEMEX ever intend to.

33. On the contrary, AWMR continuously approached CEMEX representatives with unwanted offers regarding their capacity of performing the project, if directly engaged by CEMEX.

34. As time passed there were rumors that Canopy Ecoterra and AWMR were having problems regarding the terms and conditions of their agreement. Apparently AWMR was "cherry-picking," i.e. selectively dismantling and removing only valuable material. Through information and belief, Canopy Ecoterra thought it unwarranted.

35. Through information and belief, Canopy Ecoterra informed AWMR it would not tolerate cherry-picking or the selective removal of valuable material, and as such requested AWMR to abstain from removing only valuable materials.

36. On Memorial Day, May 28, 2007, at 1:04pm, Mr. Abul Shah and his driver personally removed a copper-filled container, after Canopy Ecoterra expressly requested that AWMR abstain from exclusively removing valuable materials.

37. Afterwards, in the presence of one of AWMR's engineers assigned to the project, Canopy Ecoterra, through Ignacio Barsotelli, removed two or three containers of material.

38. Julio Mateo, the CEMEX employee in charge of authorizing way bills, never authorized removal of the three containers because Canopy Ecoterra had not identified a destination.

39. A controversy arose between Canopy Ecoterra and AWMR regarding the containers removed by Ecoterra. AWMR alleged it dismantled, gathered and loaded the material in those containers, and as such it was their property.

40. Given the ensuing controversy and AMWR's frivolous threats of filing criminal charges, CEMEX intervened in an attempt to resolve amicably and efficiently the controversy.

41. Such an action became necessary for CEMEX because both AWMR and Canopy Ecoterra principals were unwilling even to meet face to face and negotiate; and any delay in the performance of the project would compromise CEMEX's capacity to comply with the agreements it had reached with the Municipality of Ponce and other organizations.

42. In order to mitigate potential damages from the conflict between contractor and subcontractor, CEMEX urged the

parties to continue performing their contracts and to try and reach some sort of solution.

43. However, the controversy between contractor and subcontractor grew to such an extent that it eventually affected the timely performance of the work-execution project that CEMEX needed completed in the period of one year.

44. CEMEX only tried to protect its interests given the increasingly tense situation between Canopy Ecoterra and AWMR.

45. AWMR contributed to the polarization of the situation through Mr. Abul Shah's threats of civil litigation and criminal prosecution against Canopy Ecoterra. His and AWMR's sole interest was directly engaging CEMEX in the dismantling and removal project.

46. Through information and belief, as the situation worsened, AWMR expressed interest in purchasing Canopy Ecoterra's rights under the Contract with CEMEX, but Canopy refused to sell.

47. The situation reached a point where it became apparent that Mr. Abul Shah's threats of civil litigation and criminal prosecution against both Canopy Ecoterra and CEMEX only responded to his interest in CEMEX's termination of its contract with Canopy Ecoterra, and the direct engagement of AWMR's services.

48. Mr. Shah even represented that he would forget about his claims regarding the alleged stolen property, in exchange for CEMEX's direct engagement of AWMR.

49. Finally, Mr. Abul Shah's threats of criminal investigation became a reality: AWMR filed a formal complaint for criminal investigation against Canopy Ecoterra with the Puerto Rico police.

50. Given the polarity of the situation and AWMR's insistence in frivolously threatening to sue CEMEX unless they were directly engaged to perform the project, on June 22, 2007 CEMEX ordered Canopy Ecoterra to cease all works and services within the premises of the company.

51. That same day, CEMEX personnel requested AWMR personnel to cease operations and vacate the premises. AWMR personnel were allowed to clear up and secure its property before leaving the premises. Once AWMR personnel left the premises, CEMEX assigned 24 hour security to the facilities in order to specifically guard the property.

52. At that date, only fifteen to twenty percent (15-20%) of the dismantling works had been performed.

II. CEMEX DE PUERTO RICO'S FIRST CAUSE OF ACTION: BREACH OF CONTRACT.

53. Canopy Ecoterra’s subcontractor, AWMR, strayed from the appropriate and orderly execution of the work plan, causing damages to CEMEX.

54. Canopy Ecoterra’s subcontractor, AWMR, broke CEMEX property in use, such as floors, safety rails, and water lines, disconnected water recirculation pumps and wells.

55. Subcontractor AWMR’s actions caused damages to CEMEX property and interrupted the cement plant operations on multiple occasions.

56. The interruptions in operations resulted in a loss of nearly 400 tons of packed cement and in bulk.

57. Furthermore, under the Contract, Canopy Ecoterra agreed to finalize the project in the period of one year.

58. Due to the internal controversies regarding its subcontractor, and Canopy Ecoterra’s poor work-execution, the Contract was not timely performed.

59. The delay in the termination of the contract resulted in severe economic damages that have yet to be quantified by CEMEX.

60. The delay in the termination of the Contract has exposed CEMEX to liability before Commonwealth of Puerto Rico and U.S. federal government administrative agencies, such as the U.S. Environmental Protection Agency and the P.R.

Environmental Quality Board that has yet to be quantified by CEMEX.

61. The delay in the termination of the Contract has resulted in exposure to liability for non compliance with its informal agreements with the Municipality of Ponce and neighborhood associations.

III. CEMEX DE PUERTO RICO'S SECOND CAUSE OF ACTION: INTENTIONAL INTERFERENCE WITH CONTRACT.

62. AWMR intentionally created a hostile work environment within CEMEX's Ponce cement plant.

63. AWMR intentionally an in bad faith involved CEMEX in controversies between Canopy Ecoterra and AWMR, by spreading false rumors involving CEMEX and CEMEX employees, and by including CEMEX in this frivolous complaint.

64. AWMR purposefully extended and polarized disagreements with its contract party, Canopy Ecoterra, in order to gain direct access to CEMEX management and force CEMEX to completion of the Contract with Canopy Ecoterra.

65. AWMR exacerbated any and all controversies with Canopy Ecoterra, frivolously involving CEMEX, with the sole purpose of having CEMEX directly engage AWMR for the execution of the dismantling and removal project.

66. AWMR's actions forced CEMEX to stay the work execution, and the corresponding delay in the termination of

the Contract. As such, it is jointly and severally responsible for all damages resulting from the contractual breach.

IV. CEMEX DE PUERTO RICO'S THIRD CAUSE OF ACTION: DAMAGES FOR LOSS OF REPUTATION.

67. AWMR intentionally created a hostile work environment within CEMEX's Ponce cement plant.

68. AWMR intentionally an in bad faith involved CEMEX in controversies between Canopy Ecoterra and AWMR, by spreading false rumors involving CEMEX and CEMEX employees, and by including CEMEX in this frivolous complaint.

69. AWMR's actions have caused damages to CEMEX's name and reputation, because it is now unable to timely finalize the project, exposing CEMEX to liability before Commonwealth of Puerto Rico and U.S. government administrative agencies, and forcing CEMEX to renege on its informal agreements with the Municipality of Ponce and neighborhood associations.

V. REQUEST FOR SANCTIONS:

The Court should find that AWMR has acted without any regard to applicable law by (i) artificially designating Canopy Ecoterra and agent of CEMEX, being fully aware of the contractual relationship between parties; (ii) requesting equitable relief without basis for such remedy because there is no irreparable damage in this case, there are adequate remedies available, and there is no clear likelihood of prevailing on the merits; (iii) making a series of completely unfounded allegations.

So clear is the lack of any evidence whatsoever of any contractual relation between AWMR and CEMEX, that AWMR's decision to file the above captioned Complaint and request preliminary injunctive relief, should be held to have been frivolous. As a result, upon conclusion of this litigation, this Court should order AWMR to show cause why sanctions should not be imposed upon it. See, e.g., 28 U.S.C. § 1927; see also Chambers v. NASCO, Inc., 501 U.S. 32 (1991).

WHEREFORE, defendant **CEMEX de Puerto Rico, Inc.**, respectfully requests this Honorable Court to **dismiss** the frivolous complaint filed by AWMR, **grant** the counterclaim against AWMR and the cross-claim against Canopy Ecoterra filed by CEMEX on this day including compensation of all damages suffered in an amount to be determined once discovery is finished. CEMEX further requests this Honorable Court **grant** attorneys fees, sanctions and any other remedy available at law in favor of CEMEX.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that today I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to all counsel of record.

In San Juan, Puerto Rico, this 5th day of October, 2007.

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